Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	)))))))	GN Docket No. 14-28

DECLARATION OF W. THOMAS SIMMONS

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I, W. Thomas Simmons, hereby state as follows:

1. I am Senior Vice President of Public Policy at Midcontinent Communications ("Midcontinent"). I have served in various capacities at Midcontinent over the past 27 years ranging from Vice President and General Manager of the radio group to Vice President and General Manager of telephone services. Midcontinent is a mid-sized communications company that for over 40 years has provided a variety of video, voice, and high-speed broadband Internet services in cities and rural areas throughout North Dakota and South Dakota, and parts of Minnesota and Wisconsin. Midcontinent's service area includes over 335 communities serving approximately 300,000 customers. The communities we represent vary in size from densities of 5 to 116 homes per mile of cable plant, and their population ranges from less than 125 in Dodge, North Dakota, to our largest community, Sioux Falls, South Dakota, which has a population of more than 160,000.

2. If the FCC's Open Internet Order is permitted to go into effect—along with the Order's reclassification of broadband Internet access service ("BIAS") as a "telecommunications service" under Title II of the Communications Act of 1934, as amended (the "Act")—Midcontinent will suffer immediate, significant, and irreparable harm in a several respects.

3. ***Burdens of Compliance with Sections 201 and 202 and Related Regulatory Requirements.*** First and foremost, the sheer uncertainty surrounding this new regulatory regime will have a profound effect on Midcontinent's business. The Order imposes intrusive new federal oversight of nearly every aspect of our business with only the most minimal guidance on how that oversight will be applied. For example, in addition to its three "bright line" open Internet rules, the Order adopts a "no-unreasonable interference/disadvantage standard" pursuant to Sections 201 and 202 of the Act. Under this standard, the FCC will prohibit on a case-by-case basis all broadband provider practices that "unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of edge providers to access consumers using the Internet." Order ¶ 135. Although recognizing that "vague or unclear regulatory requirements could stymie rather than encourage innovation," the Order provides only a vague, "non-exhaustive list of factors" that the FCC will consider in deciding whether a broadband provider's practices might run afoul of this rule. *Id.* ¶¶ 138-45. This amorphous standard casts a cloud on all of Midcontinent's mid- and long-term business planning, creating a need for new layers of internal and external scrutiny that Midcontinent has never previously required and, as a medium-size business operating a massively complicated broadband network, can scarcely afford.

4. Further, this vague "no unreasonable interference/disadvantage standard" will create the enormous practical problem of developing a recordkeeping system to assure and document compliance with the new standard. Determining the types of business records that must be created and maintained to demonstrate Midcontinent has not unreasonably interfered with or disadvantaged consumers or edge providers will be difficult and time consuming. How does a BIAS provider document a negative (that we have not unreasonably interfered or disadvantaged)? This will require substantial investments of time, equipment and resources to design and create systems to accumulate, organize and maintain potentially crippling amounts of data. On its face, this may seem like an expected and necessary cost associated with any regulation, but in this case – assembling and storing data to demonstrate compliance through proof of a negative – has far-reaching practical effects and costs.

5. ***Burdens of Compliance with Section 222.*** Midcontinent will also suffer substantial unrecoverable costs implementing procedures and training its staff to comply with certain other requirements imposed by Title II. Section 222 of the Communications Act, for instance, imposes a general duty on all telecommunication carriers "to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers"; imposes certain specific restrictions on the use—

including for marketing purposes—of "customer proprietary network information" ("CPNI") without customer approval; and requires telecommunications carriers to disclose CPNI to "any person designated by the customer" upon the customer's request. 47 U.S.C. § 222. The Order forbears from applying the FCC's regulations under Section 222, but it does not "forbear from applying [S]ection 222" itself. Order ¶ 462. Section 222 will therefore impose requirements on Midcontinent immediately when the Order takes effect. We understand how these requirements apply to our existing telecommunications services, but it is not at all clear how the requirements apply to newly reclassified Internet access services.

6. The FCC has adopted detailed authentication and notification regulations that prevent telecommunications carriers from releasing certain customer data based on customer-initiated requests unless specific password procedures are followed and that require "immediate" customer notification when account changes are made. *See* 47 C.F.R. § 64.2010. These regulations also impose mandatory law-enforcement and customer notification requirements in the event of a breach of the carrier's CPNI. *See id.* § 64.2011. Although the Order does not apply these regulations directly to Midcontinent's broadband service, the FCC has indicated that these procedures are the "minimum requirements" to comply with the duty in Section 222(a) "to protect the confidentiality of [their customers'] proprietary information," which will apply immediately to

Midcontinent's service, if the Order is not stayed. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 64 (2007). Indeed, the FCC expects telecommunications carriers to "take additional steps" to protect CPNI where "feasible." *Id.*

7. Midcontinent already has practices and procedures in place to protect its customers' account information and other data, but after reclassification it will have no choice but to implement the specific procedures that the FCC has indicated represent the minimum required to satisfy Midcontinent's new Section 222 duties with respect to BIAS customers and evaluate whether any "additional steps" to protecting its customers' private data are feasible, or risk facing an FCC enforcement action in the future.

8. Implementing these new procedures and training our staff will come at a substantial cost to Midcontinent. That includes the time and money that will have been wasted (and completely unrecoverable) if the Order is vacated. But, just as importantly, those costs include the loss of goodwill caused by authentication protocols that, in our experience, customers tend to favor in the abstract but view as inconvenient obstacles and bureaucratic foolishness when actually subjected to them. That will be particularly true when applied to Midcontinent's BIAS

customers for whom certain backup verification procedures may not be available. For example, in the voice context, when a customer has lost her password and is unwilling to provide the last 4 digits of her social security number, the procedures allow for a phone call to the phone number of record. 47 C.F.R. § 64.2010(b). That procedure works well when the telecommunication provider is, in fact, providing telephone service, and therefore the customer is guaranteed to have a current phone number of record. It will prove extremely frustrating and difficult in the BIAS context where the customer has not provided a phone number, or the phone number provided has since changed.

9. Moreover, if the Order is not stayed, certain Midcontinent business practices will be immediately prohibited. Section 222 defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship." 47 U.S.C. § 222(h)(1)(A). "Except as required by law or with the approval of the customer," a telecommunications carrier may "use, disclose, or permit access" to "individually identifiable" CPNI only in its provision of (1) "the telecommunications service from which such information is derived," or (2) "services necessary to, or used in,

the provision of such telecommunications services." *Id.* § 222(c)(1). Again, these requirements will apply to Midcontinent's practices immediately.

10. In the voice context, the FCC has concluded that "the best interpretation" of Section 222(c)(1) affords carriers the right to use CPNI for marketing related offerings within their customers' existing service, but does not permit the use of CPNI to market "categories of service" to which its customers do not already subscribe. *Implementation of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, ¶ 35 (1998). Without further guidance from the FCC, Midcontinent has no choice but to apply this "best interpretation" of Section 222(c)(1) to the BIAS context. Doing so, however, would require Midcontinent immediately to stop using CPNI to market non-BIAS services to its BIAS-only subscribers unless and until it has received customer approval for such practices—for example, targeting its BIAS-only subscribers for offers of telephone or cable television service, since the "type" of telecommunications service a customer subscribes to (here, BIAS-only service) is included in the statutory definition of CPNI.

11. This situation is exacerbated by the absence of any safe harbor, which means that even conduct that is consistent with the voice rules may be deemed insufficient with respect to broadband. Midcontinent therefore can either wait to seek customer approval for newly prohibited marketing practices until the FCC

specifies an approval method for doing so (and thus forgo these practices until then) or it can implement new approval procedures at substantial costs only to risk the FCC finding those procedures inadequate in the future.

12. Finally, Section 222(c)(2) requires a telecommunications carrier to "disclose [CPNI], upon affirmative written request by the customer, to any person designated by the customer." 47 U.S.C. § 222(c)(2). Under the plain language of that provision, Midcontinent will need to institute procedures for responding to disclosure requests made by its BIAS customers, even in advance of the adoption of any BIAS-specific rules guiding that process. That likely will include, at a minimum, implementing procedures to track and respond to requests for disclosure; training employees to respond to such requests; and maintaining records of such requests and responses in order to demonstrate compliance.

13. Moreover, due to the distributed nature of the Internet and frequently used tracking techniques by other Internet companies (*e.g.*, cookies, web browser finger-printing), comprehensive records our customers' Internet activities may be captured and stored by companies and services that have no relation to Midcontinent (*e.g.*, Facebook, Google, or Amazon). While Midcontinent already has practices and procedures in place to protect its customers' data, the Order subjects Midcontinent's broadband service for the first time to new and ambiguous requirements under Section 222, under which parties might attempt to attribute the

disclosure of such sensitive information to Midcontinent in these circumstances. To protect against such false data breach attributions, Midcontinent will be forced to purchase new equipment, implement significant new monitoring and audit procedures, and hire and train additional staff, to ensure that all network transmission equipment that even temporarily collect and/or store information about those transmissions are secured against all forms of unauthorized access and are actively monitored to detect such access.

14. ***Fees, Taxes, and Related Burdens Resulting from the FCC's Order.*** Reclassification of BIAS will also result in immediate, irreparable harms for Midcontinent related to its pole attachment agreements and potential demands for new State taxes, among other potential fees.

15. *Pole Attachment Agreements.* Midcontinent has entered into pole attachment agreements with approximately 50 public utilities and communities that grant Midcontinent the right to attach equipment to approximately 120,000 utility poles across three states to deliver cable service and related non-telecommunications services to its customers. As is customary, some of these agreements specify different attachment rates for cable services and for telecommunications services. Section 224 of the Act provides different formulas for calculating "just and reasonable" pole attachment rates for "cable service" and for "telecommunications services"; rates for "telecommunications services" are

permitted to be higher. *Compare* 47 U.S.C.§ 224(d) (cable service rate formula), *with id.* § 224(e) (telecommunications services rate formula); *see also* Order ¶ 481 (stating that the "cable rate" is the "lower rate" under the statutory formulas). Reclassification will therefore permit utility providers to increase the rates they charge Midcontinent on a significant proportion of its pole attachment agreements. As utility pole owners begin charging these higher rates, Midcontinent will be forced either to pursue costly utility-by-utility litigation to challenge these increases, or to withhold payment until judicial review of the Order is complete. Utility pole owners typically respond to these kinds of measures, however, by refusing to process new attachment permits until all amounts are paid in full, which would significantly impede Midcontinent deployment of broadband facilities. These disputes also would require Midcontinent to retain outside counsel to review agreements and challenge the utilities' demands for higher rates at significant cost to the company.

16. *State and Local Taxes – South Dakota.* Midcontinent has significant operations in South Dakota, which imposes unique taxes on "telecommunications services." *See* South Dakota Codified Law 10-33A and 49-1A. These taxes have never previously been applied to BIAS, but if the Order takes effect, Midcontinent may face imposition of these new taxes on BIAS services and facilities. Notably, while the Order claims that the Internet Tax Freedom Act ("ITFA") prohibits states

and localities from imposing "[t]axes on Internet access," Order ¶ 430, South Dakota's taxes were "grandfathered" under the ITFA. 47 U.S.C. § 151 note, ITFA, § 1105(10)(C). These additional taxes—and the substantial costs associated with challenging them—will not be readily recoverable in the event the Order is vacated.

17. *State and Local Taxes – North Dakota.* A similar situation exists for a more limited period of time in North Dakota where Midcontinent also has significant operations. North Dakota also imposes unique taxes on "telecommunications services," *see* North Dakota Century Code 49-21, and its taxes on Internet access likewise were "grandfathered" under the ITFA, 47 U.S.C. § 151 note, ITFA, § 1105(10)(C). However, North Dakota has recently passed legislation to repeal its Internet access taxes effective in 2017. Accordingly, if the Order takes effect, Midcontinent may face imposition of new taxes on BIAS services in North Dakota until the effective date of such repeal. Any additional North Dakota taxes will not be readily recoverable in the event the Order is vacated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 1, 2015

W. Thomas Simmons,
Senior Vice President of Public Policy

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I, W. Thomas Simmons, hereby state as follows:

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8. Implementing these new procedures and training our staff will come at a substantial cost to Midcontinent. That includes the time and money that will have been wasted (and completely unrecoverable) if the Order is vacated. But, just as importantly, those costs include the loss of goodwill caused by authentication protocols that, in our experience, customers tend to favor in the abstract but view as inconvenient obstacles and bureaucratic foolishness when actually subjected to them. That will be particularly true when applied to Midcontinent's BIAS

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13. Moreover, due to the distributed nature of the Internet and frequently used tracking techniques by other Internet companies (*e.g.*, cookies, web browser finger-printing), comprehensive records our customers' Internet activities may be captured and stored by companies and services that have no relation to Midcontinent (*e.g.*, Facebook, Google, or Amazon). While Midcontinent already has practices and procedures in place to protect its customers' data, the Order subjects Midcontinent's broadband service for the first time to new and ambiguous requirements under Section 222, under which parties might attempt to attribute the

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permitted to be higher. *Compare* 47 U.S.C.§ 224(d) (cable service rate formula), *with id.* § 224(e) (telecommunications services rate formula); *see also* Order ¶ 481 (stating that the "cable rate" is the "lower rate" under the statutory formulas). Reclassification will therefore permit utility providers to increase the rates they charge Midcontinent on a significant proportion of its pole attachment agreements. As utility pole owners begin charging these higher rates, Midcontinent will be forced either to pursue costly utility-by-utility litigation to challenge these increases, or to withhold payment until judicial review of the Order is complete. Utility pole owners typically respond to these kinds of measures, however, by refusing to process new attachment permits until all amounts are paid in full, which would significantly impede Midcontinent deployment of broadband facilities. These disputes also would require Midcontinent to retain outside counsel to review agreements and challenge the utilities' demands for higher rates at significant cost to the company.

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and localities from imposing "[t]axes on Internet access," Order ¶ 430, South Dakota's taxes were "grandfathered" under the ITFA. 47 U.S.C. § 151 note, ITFA, § 1105(10)(C). These additional taxes—and the substantial costs associated with challenging them—will not be readily recoverable in the event the Order is vacated.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 1, 2015

W. Thomas Simmons,
Senior Vice President of Public Policy

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Protecting and Promoting the Open Internet	)))))))	GN Docket No. 14-28

DECLARATION OF ROBERT WATSON

DECLARATION OF ROBERT WATSON,
OWNER OF WATSON CABLE

I, Robert Watson, hereby state as follows:

1. I am owner of Watson Cable Company ("Watson").

2. Watson is a small broadband Internet access service and cable television provider based in Warner Robins, Georgia. Founded in 1970, Watson serves urban and suburban areas in middle Georgia. It has cable systems in Macon and Warner Robins, Georgia. The company also serves Robins Air Force Base.

3. Watson has about 300 residential video customers and 200 broadband Internet customers in Warner Robins. It has about 200 video customers and 36 broadband Internet customers in Macon. Watson does not offer telephone service.

4. Watson has three employees working in operations and two employees providing customer support. None of Watson's employees works solely on regulatory compliance matters.

5. In the past decade, the company has invested approximately $800,000 in these networks, in reliance on the light-touch regulatory framework the FCC has to date applied to broadband Internet access and cable television service. Watson would not have invested so much money if the industry had been more heavily regulated, and will likely have to reduce its investment now that the FCC has applied heavier regulations to broadband Internet access service.

6. Watson understands that the FCC's Open Internet Order ("Order") reclassified broadband Internet access providers like Watson as common carriers under Title II of the Telecommunications Act of 1934. Watson has never been regulated under Title II and has no experience complying with Title II requirements. Watson's reclassification as a Title II carrier will thus impose significant new burdens on the company. Watson may have to hire additional employees to manage compliance, which will be particularly burdensome given the company's small number of employees and the absence of any employees who work solely on regulatory compliance efforts.

Irreparable Harm from CPNI Requirements

7. Watson understands that the FCC has used its authority to forbear, for now, from applying some regulations implementing Title II to broadband Internet access providers. But the FCC did not forbear from applying 47 U.S.C. §222, which requires telecommunications providers to protect Customer Proprietary Network Information ("CPNI"). To the extent that forbearance does not entirely exempt Watson from CPNI requirements, requiring compliance with those procedures will harm Watson irreparably.

8. The Order states that §222 imposes a duty on carriers to protect the confidentiality of their customers' CPNI. Order ¶53. To the extent this duty mandates that telecommunications carriers require customers to provide passwords

during support calls or photo identification during in-store visits before disclosing CPNI, *see* 47 C.F.R. §64.2010(b), (d), it would impose serious and irreparable harm on small carriers, like Watson, that have strong personal relationships with their customers. Because of Watson's small customer base and its dedicated customer service staff that offers live support, Watson's customers develop personal, informal relationships with the company. Those close customer relationships create loyalty that the company cultivates to ensure a loyal customer base that stays with the company.

9. Mandating that customers provide "authentication"—*e.g.*, passwords or other forms of identification—will irreparably harm these customer relationships. Many customers will view the new procedures as an affront to the close relationship the company has developed with them over the years. And most do not want to be bothered to jump through additional hoops when they need help with their service. Complicated authentication procedures, moreover, will cause many customers to perceive Watson as another faceless company that does not make a significant effort to know and have relationships with its customers. Many of Watson's customers will also have trouble remembering passwords, and will be skeptical of authentication procedures that require disclosure of personal information.

10. Impairment of close customer relationships may cause Watson to lose customers and market share. Watson's customers choose their broadband Internet access and cable television service based not just on price, but also on their personal relationships with the company. Personal customer relationships are Watson's comparative advantage. Watson competes with larger providers in 75% of its service area, and personalized customer service helps Watson attract and retain customers who would otherwise go to those competitors.

11. Losses of goodwill and customers are irreparable: Relationships that are damaged are hard to repair; goodwill that is lost is hard to retrieve; and winning back customers who switch or discontinue service is a rarity in this industry. There would be no way for Watson to make up for those losses once they are incurred.

12. The Order states that § 222 imposes restrictions on carriers' ability to use, disclose, or permit access to customers' CPNI without their consent. Order ¶462. We understand that the FCC has previously interpreted § 222 to prohibit disclosing CPNI to partners or contractors when the information may be used for marketing purposes, and has suggested that any sharing of CPNI with partners or contractors may put that information at a heightened risk of disclosure. Restrictions on such sharing of information with partners or contractors will irreparably harm Watson, which contracts with another company, Momentum Telecom, to provide certain operational services.

13. Momentum Telecom works with Watson to configure and activate new service in customers' homes. Momentum Telecom also provides Watson with a second level of technical support for its network infrastructure.

14. To the extent that § 222 restricts how Watson may share CPNI with its contractors, Watson will have to restructure its relationship with Momentum Telecom. For example, it may have to renegotiate its contracts with Momentum Telecom to ensure that CPNI is never used for marketing or sales purposes, and to ensure that Momentum Telecom takes additional measures to ensure the confidentiality of CPNI. And to the extent that Watson concludes that sharing CPNI with Momentum Telecom creates a heightened risk of disclosure of CPNI, Watson may be forced to handle certain operational and technical tasks itself.

15. Having to renegotiate, or forgo entirely, its arrangement with Momentum Telecom will irreparably harm Watson. In particular, if Watson must find another provider to work with, it may not be able to secure the same favorable terms it currently enjoys with Momentum Telecom. And if it must start handling those operational activities itself, its ability to offer seamless customer service may be disrupted, for example by delays in installing new service. Watson would never be able to recoup those expenses or the lost goodwill.

16. The FCC emphasized in the Order that § 222 requires carriers to take reasonable precautions to protect CPNI. Order ¶ 53. It also offered, as a warning,

the example of a telecommunications carrier that was found in violation of § 222 for failing to put in place security measures for its computer databases containing CPNI. *Id.* Even though Watson has never had any problem keeping customer information safe, § 222 may require Watson to upgrade the security of its computer databases, which will irreparably harm the company.

17. Watson currently stores customer information, such as name, phone number, and service address, as well as information the FCC might in the future construe as CPNI, in the same database it uses for its billing system. To isolate CPNI from other data and limit access, Watson would have to upgrade its software systems and potentially move to a new, costly system. New, untested software may result in computer crashes or other bugs. Watson will also have to re-train its users in the new software. That does not merely impose financial harm; it also threatens goodwill. Transitions and revisions to computer systems are always imperfect at first. That may result in reduced service and support quality, which would erode customer goodwill.

18. Any harm to Watson from upgrading its computer systems would be irreparable. Watson would never be able to recoup the cost of new software. More importantly, if customer service suffers while the computer system is being upgraded, Watson will never be able to recover the lost goodwill.

19. Moving to Title II regulation will also impose irreparable harm to the extent § 222 is construed to prohibit carriers from using CPNI except to provide telecommunications service or related services, or prohibits the use of CPNI for marketing purposes, except within the same "categories of service" to which a customer is already subscribed. Imposing these restrictions on Watson will prevent it from efficiently marketing its services. Watson will be, in essence, forced to choose between violating an uncertain law or making unnecessary changes to the way it markets its products.

20. Watson does very little marketing. Its primary form of marketing is a direct mailing it sends two to three times per year to existing customers and non-customers. The company sends different letters to existing customers than to non-customers. Watson has determined through experience that direct mailing is the most efficient way of reaching its small service area and customer base. To the extent that Title II restricts how Watson can use CPNI to market to its existing customers, Watson will have to modify or forgo certain marketing opportunities. For example, Watson would be unable to send a direct mailing advertising a new television package to the broadband customers who are most likely to want to subscribe to it.

21. Those foregone marketing opportunities will irreparably harm Watson. The company can never recoup revenues or market share it loses from

lost opportunities to sign up customers for new levels of service. And it would be impossible to quantify the impact on its competitive position.

22. Watson currently has no formal policies and procedures for handling CPNI. It will have to develop such policies from scratch and train its employees to follow them. That may require hiring additional personnel as well as the involvement of legal counsel. Worse still, because the FCC has yet to devise specific rules for how broadband Internet access providers should handle CPNI, the whole endeavor may be a wasted effort. Watson must implement policies now—it cannot risk non-compliance—but may have to put in place entirely new policies when the FCC determines specific requirements. Watson would never be able to recoup the cost of these unnecessary efforts.

23. Watson cannot spread the expenses of those compliance efforts over a large customer base so as to reduce the impact on individual bills. If Watson had to hire just one new employee to manage compliance efforts—to say nothing of new hardware and software—that would require significant increases in the bills of the company's 600 customers. To the extent Watson cannot pass those costs along, the financial harm will be unrecoverable and irreparable. To the extent Watson attempts to pass those expenses through, it will lose some customers. And it may lose many customers to larger competitors who can spread compliance costs among a large base of customers, minimizing any impact on individual bills. Even

if Watson were eventually able to lower prices to prior levels, customers who have left once are unlikely to come back.

24. The uncertainty regarding the extent and scope of these prohibitions exacerbates the irreparable harm. Although the FCC has decided to forbear from certain specific CPNI regulatory requirements, it has also indicated that § 222 itself imposes certain duties in connection with CPNI. Order ¶¶462, 467. The FCC does not specify what requirements are necessary for statutory compliance. Watson would face enormous uncertainty about which rules it must obey and which rules are merely regulatory additions that have been forborne.

25. Any misjudgment by Watson about the statute's requirements could have catastrophic consequences. Watson understands that the FCC can impose large penalties—sometimes millions of dollars—for violations of CPNI rules—and has done so. Watson also understands that the FCC did not forbear from provisions of Title II that create a private right of action against carriers who violate other provisions of the statute. Watson would face grave risks as a result. Even hiring counsel—which can be prohibitive for a small company—cannot wholly insulate Watson from those risks because there is so much uncertainty about what § 222 requires of broadband Internet access providers.

26. Watson understands that the FCC has decided to forbear from applying other requirements under Title II. But the FCC has created enormous

regulatory uncertainty in the process. For example, the Order forbears, "for now," from requiring broadband Internet access providers to contribute to the Universal Service Fund, but does not forbear from applying Title II provisions that presuppose a provider's contributions into the fund. Order ¶¶57-58, 488; *see* 48 U.S.C. §254(h)(1)(A). The FCC also instructs providers to protect customer privacy without giving concrete guidance on how to do so. Order ¶¶462, 467, 468, 470. The resulting patchwork leaves Watson uncertain about its new obligations under Title II, and leaves the door open for the FCC to impose additional obligations and fees in the near future.

27. Uncertainty surrounding the FCC's forbearance from applying certain Title II provisions will jeopardize Watson's upgrade plans. Watson is currently in the process of upgrading the circuits that connect its network with the wider Internet. It is also looking into upgrading its Macon, Georgia, network from analog to digital television. Such upgrades require substantial upfront capital expenditures. Watson will have to take on debt for the capital expenditures, and commit to servicing it with revenues remaining after paying for operating expenses and overhead, like compliance costs. To the extent that the new Title II rules create uncertainty about future compliance burdens, Watson will have to err on the side of caution before committing to major long-term capital projects.

28. Harm from forgone upgrades and capital projects will be irreparable for both Watson and its customers. For example, if Watson delays rolling out higher broadband Internet access speeds or digital television, Watson will give up opportunities to win new customers, or entice existing customers to purchase more services. It will never be able to calculate the cost of those forgone opportunities. And many customers—including those in Warner Robins Air Force Base—will be deprived of those services.

Irreparable Harm from Increased Pole Attachment Rates

29. Watson understands that Georgia does not regulate pole attachment rates at the state level, and that utilities calculate the pole attachment rates Watson pays based on federal formulas. Watson also understands that it currently pays rates based on formulas applicable to "cable services" and that reclassification may cause utilities to apply formulas applicable to "telecommunications services," which may result in higher rates.

30. Watson will be harmed by any increases in pole attachment rates. Watson has pole attachment agreements with Georgia Power, Flint EMC, and Southern Rivers Energy. Watson's pole attachment fees are already high and a substantial source of costs. Watson would have to pass on any increases to pole attachment fees to customers.

31. Harm to Watson from increased pole attachment fees will be irreparable. Watson will have to pay any increases immediately—if it withheld fees some utilities would remove its equipment from their poles. If Watson does not pass along increased fees to its customers, Watson will have a difficult time spending even more capital to properly maintain and repair its network. If Watson does pass along increased fees to its customers, customer goodwill will be eroded.

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

May 1, 2015

Robert Watson

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